1942 K Legal DEPARTMENT A BRANCH

File No. O-Motor Tax/42

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Subject:—

Opinions under the Motor Vehicles Taxation Act, 1935.

(Motor Vehicles Tax Rules 1940)

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File No. O Motor Tax/42

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Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the concession provided in Note 2 to Schedule I of the Bombay Motor Vehicle Tax Rules, 1940, would be available to foreign registered motor vehicles brought temporarily for use into this Province.

2. Rule 19 of the Bombay Motor Vehicles Tax Rules, 1940, provides for a declaration in Form 'TT' to be delivered to the nearest registering authority by a person who brings a motor vehicle temporarily into the Province and keeps it for use therein or who although he keeps a motor vehicle outside the Province, ordinarily uses it in the Province. Rule 20 provides for exemption from the payment of tax in respect of motor vehicles other than transport vehicles kept temporarily for use for a period not exceeding 30 consecutive days in any financial year. Rule 21 provides that if a motor vehicle other than a transport vehicle is brought into the Province and is to be kept for temporary use therein for a period exceeding thirty consecutive days or if such a vehicle kept outside the Province is to be used therein over a period exceeding thirty consecutive days, the owner or person in charge of such vehicle shall pay to the nearest registering authority, within seven days of the commencement of such use, the amount of tax due for the number of months the vehicle is to be used as computed in the table in the First Schedule to these rules. Note ~~x~~ z in the First Schedule runs as follows:/

~~x~~ "In the case of motor vehicles included in classes III and IV above which are to be used solely ~~in~~ within Municipal and Cantonment limits, two/thirds of the tax only should be sent~~#~~.

The Schedule is made in respect of Rule 21 and Note 2 forms part of the Schedule. A note to the rules forms part of the Rules. In the case of motor vehicles included in classes III and IV in the Schedule which are temporarily brought into the Province and are to be used solely within Municipal limits, two/thirds of the tax will be payable. This concession is given to the persons coming under Rule 21 and is independent of though consistent with the provision for such concession made in the proviso to articles III and IV in Schedule I to the Act. The concession referred to in the Schedule to the Act applies to motor vehicles

registered in the Province, but Note 2 in the Schedule I to the Rules applies to motor vehicles brought temporarily in the Province. Rules 19 to 24 et. seq. which relate to vehicles temporarily brought in the Province are made under section 20(2)(f) of the Act and not under the Provisos to articles III and IV in Schedule I to the Act. It therefore appears that the concession of payment of 2/3rds tax under Note 2 in the First Schedule to Rules is available in respect of motor vehicles brought temporarily for use in the province if they are solely to be used within Municipal or Cantonment limits. The view taken by the Deputy Secretary, H.D., that if the concession is available, it would benecessary to provide for another tax token form or instruct the Regional Transport officers to endorse form "OT" suitably is correct. It would therefore be necessary as observed by D.S., H.D. at page 6 ante to amend form 'FT' suitably so as to include in it a statement to the effect that the person making the declaration intends to use the vehicle solely in Municipal or cantonment limits or within and without such limits, on the lines of clauses (a) and (b) in form 'AT'. The view taken in H.D. office note at page 5 ante is not correct.

C.C. P.N.M.
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Remembrancer of Legal Affairs.

S.R.I. 23-2

U.D. to H.D.No. 1848, dated the 26th February 1942.

S.A.K.
3/5/56.

Submitted.

The question for the consideration of the R.I.A. is whether "tractors" are taxable under Article III of Article V in clause A of Schedule I to the Bombay Motor Vehecles Tax Act, 1935.

2. Under section 3(1) of the Bombay Motor Vehicles Tax Act, 1935, from the 1st day of April 1936 a tax at the rates fixed by the Provincial Government by Notification in the official Gazette not exceeding the maximum rates specified in the First Schedule shall be levied on all motor vehicles used or kept for use in the Presidency. Clause (15) of section 3 of the Bombay Motor Vehicles Tax Act, 1935, provides that the words and expressions used but not defined in this Act shall have the meaning assigned to them in the Motor Vehicles Act, 1939. A "tractor" as defined in clause (30) of section 2 of the Motor Vehicles Act, 1939, means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois; butexcludes a road-roller The expression "motor vehicle" is defined in clause (18) of section 2 of the Motor vehicles Act, 1939. A "tractor" being a "motor vehicle" within the meaning of section 2(30) of the Motor Vehicles Act, 1939, it cannot be driven unless itis registered in accordance with the provisions of Chapter III of Motor Vehicles Act, 1939 (see section 39) Under rule 3 of the Bombay Motor

Vehicles Tax, Rules, 1940, when a motor vehicle is registered within the Province, the registering authority shall , after verifying the particulars furnished in the application for registration, determine the rate at which the vehicle is liable for the levy of the tax and make an endorsement i n Form T on the said application and the certificate of taxation to be issued on payment of the tax.

2) Clause A in Schedule I provides for levy of tax on motor vehicles fitted solely with pneumatic tyres. It is not known whether the tractors are fitted solely with pneum atic tyres. If not, the tax would be leviable under clause B. This aspect of the case does not appear to have been considered in the H.D. office note. Assuming, however, that the tractors are solely fitted with pneumatic tyres, the quoation is whether the tax can belevied under Article II in clause A of Schedule I . Article III in clause A provides for motro vehicles (including tricycles) weighing more than 5 cwt unladen materials, and used for the transport or haulage of goods o materials, and the registered laden weight of which does not exceed that specified in clauses (a) to (F) as may be applicable The Motor vehicles falling under this Article require to satisfy the following conditions: (i) that they sh uld be weighing more than 5 cwt unladen; (ii) they sh uld be used for the transport or haulage of goods or materi ls; and (iii) their "registered laden wei ht" should not exceed the weight specified in clauses (a) to (f), as may be applicable.

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4. The expression "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailerwhen working, but excluding the weight of a driver or attendant; and when alternative parts or bodies are used, the unladen weight of thevehicle means the weight of the vehicle with the heaviest such alternative part of body. The expression "registered laden weight" means in respect of any vehicle the total weight of thevehicle and load registered by the registering authority as permissible for that vehicle (vide clauses (34) and (27) respectively of section 2 of the Motor Vehicles Act, 1939). The term "tractor" as defined makes it clear that it is a motor vehicle which is not constructed to carry any load, and consequently it can have no "registered laden weight". That being so, the-con the condition about the registered laden weight mentioned in any of the clauses (a)to (f) under Article III of clause A inSchedule I will not be satisfied. The tax cannot therefore, be levied underArticle III of Clause A in Schedule I.

5. Article V in clause A of Schedule I provides for levy of tax on motor vehicle other than those liable to tax under the foregoing provisions of the Schedule. Under the clauses (a) to (d) under Article V the tax is to be assessed on the basis of unladen weightof the motor vehicles. Since a "tractor" not being constructed to carry any load has only unladen weightit would be liable to the levy of the tax under Article V in clause A of Schdule.

Sd/- E.P.Bhamgara/16-10

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The question for the consideration of the R.L.A. is whether a tractor is taxable under Article III or Article V of clause A of Schedule I to the Bombay Motor Vehicles Tax Act, 1935.

2 Section 3 of the Bombay Motor Vehicles Tax Act, 1935 provides that from the 1st day of April 1936 a tax at the rates fixed by the Provincial Government by notification in the Official Gazette not exceeding the maximum rates specified in the first Schedule shall be levied on all motor vehicles used or kept for use in the Presidency. For the purposes of the Act, a "motor vehicle" means any mechanically propelled vehicle and a "tractor" means a motor vehicle which is not itself constructed to carry any load the unladen weight of which does not exceed 16,000 pounds avoirdupois. (See section 2(15) of the Act read with sub-sections (18) and (30) of section 2 of the Motor Vehicles Act, 1939). A tractor is thus liable to be taxed under section 3 of the Bombay Motor Vehicles Tax Act. Clause A of Schedule I to the Act relates to motor vehicles fitted solely with pneumatic tyres. tyres. Article III of that clause prescribes the maximum tax leviable in respect of motor vehicles weighing more than 8 cwt. unladen used for the transport or haulage of goods or materials: but the fees prescribed in the articles are with reference to the registered laden weight of the vehicle. "Registered laden weight" means in respect of any vehicle the total weight of the vehicle and the load certified and registered by the registering authority as permissible for that vehicle. (Section 2(27) of the Motor Vehicles Act, 1939) As a tractor is a vehicle which is not itself constructed to carry any load, it can have no registered laden wax weight consequently it is not liable to be taxed under Article III. Article VI is the residuary Article which applies to motor vehicles other than those liable to tax under the foregoing provisions of the Schedule. As a tractor does not come within the provisions of any of Articles I-V, it is

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liable if to tax under Article V. The taxation will be governed by clause A or clause B of the Schedule according as whether or not the vehicle is one solely fitted with pneumatic y tyres.

Sd/- P.M.Moos

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Remembrancer of Legal Affairs.

U.R. to H.D. No. 9098m dated 12th November 1942.

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